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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. LAWRENCE A. MARES, JR., Defendant and Appellant.	G053959 (Super. Ct. No. 13CF0191) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Sheila F. Hanson, Judge. Affirmed.

Nancy J. King, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Steve Oetting and Daniel J. Hilton, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

A jury convicted Lawrence A. Mares, Jr., of premeditated attempted murder (Pen. Code, §§ 187, subd. (a), 664, subd. (a) [count 1]; all statutory citations are to the Penal Code), assault with a semiautomatic firearm (§ 245, subd. (b) [count 2]), and assault with a deadly weapon on a peace officer (§ 245, subd. (c) [count 3]). The jury also found Mares personally discharged a firearm causing great bodily injury (§§ 12022.5, subd. (a) [count 2], 12022.53, subds. (c) & (d) [count 3]) and personally inflicted great bodily injury (§ 12022.7, subd. (a) [count 2].) Mares challenges the sufficiency of the evidence to support the assault on a peace officer conviction (count 3). For the reasons expressed below, we affirm.

I

FACTUAL AND PROCEDURAL BACKGROUND

Counts 1 and 2 (Premeditated Attempted Murder and Assault with a Firearm)

Alfred Ruiz was a drug dealer selling methamphetamine and marijuana. Ruiz purchased drugs from Imelda Ramirez. Mares, also known by the name "Stranger," hung out with Ramirez, and Ruiz knew him well. At some point during the summer or fall of 2012, Ruiz had a falling out with Ramirez over money. On the morning of December 6, 2012, Ruiz went with a friend to a Buena Park motel to deliver marijuana to Ramirez. When he walked out of a room, Mares held a gun to Ruiz's head and told him to "[g]et in the room." Ruiz began to run away when Mares shot him in the back. Ruiz ran to the motel lobby where his friend called 911.

Count 3 (Assault on a Peace Officer)

On May 10, 2013, Detective Joe Pirooz, assigned to the Department of Justice fugitive apprehension team, accompanied several officers to a Lake Forest motel looking for Mares. After receiving information Mares was in a vehicle, Pirooz positioned his car to block Mares's path out of the parking lot. Another officer ordered Mares to stop his car and to put his hands up where officers could see them. Mares's vehicle was partially trapped between the two officers' vehicles. Pirooz exited his car with his gun

drawn and repeated the order to stop. Instead, Mares backed up, maneuvering between the two police vehicles and toward Pirooz. His car was moving faster than walking speed, and Pirooz was forced to move out of the way to avoid being hit. After Mares's vehicle passed Pirooz, the officer fired four rounds at the front of Mares's vehicle, causing it to collide with a parked truck. Neither Mares nor his female passenger were injured.

In June 2015, the jury convicted Mares as noted above. In August 2015, the court imposed a low term of three years for assault with a deadly weapon on a peace officer, a consecutive life term for premeditated attempted murder, and a consecutive term of 25-years-to-life term for the firearm enhancement associated with the attempted murder conviction. The court imposed and stayed a term for assault with a semiautomatic firearm. The court also imposed various fines and fees.

II

DISCUSSION

Sufficiency of the Evidence on the Count Charging Assault with a Deadly Weapon on a Peace Officer

Mares contends the evidence is insufficient to sustain his conviction for assault with a deadly weapon on a peace officer. In assessing the sufficiency of the evidence to support a conviction, "we review the whole record to determine whether *any* rational trier of fact could have found the essential elements of the crime or special circumstances beyond a reasonable doubt. [Citation.] The record must disclose substantial evidence to support the verdict – i.e., evidence that is reasonable, credible, and of solid value – such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. [Citation.] . . . 'We resolve neither credibility issues nor evidentiary conflicts; we look for substantial

evidence. [Citation.]' [Citation.] A reversal for insufficient evidence 'is unwarranted unless it appears "that upon no hypothesis whatever is there sufficient substantial evidence to support'" the jury's verdict. [Citation.]" (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

The elements of assault with a deadly weapon on a peace officer are as follows: (1) the defendant did an act with a deadly weapon that by its nature would directly and probably result in the application of force to a person; (2) the defendant did the act willfully; (3) the defendant was aware of facts that would lead a reasonable person to realize that his or her act would result in the application of force to a person; (4) the defendant had the present ability to apply such force with the deadly weapon; (5) the person assaulted was lawfully performing his duties as a peace officer; and (6) the defendant knew, or reasonably should have known, the person assaulted was a peace officer performing his duties. (§§ 240, 245, subd. (c)(1); CALCRIM No. 860.) Assault is a general intent crime. (*People v. Williams* (2001) 26 Cal.4th 779, 788 (*Williams*); *People v. Colantuono* (1994) 7 Cal.4th 206, 215-216 (*Colantuono*).) An "assault does not require a specific intent to cause injury or a subjective awareness of the risk that an injury might occur. Rather, assault only requires an intentional act and actual knowledge of those facts sufficient to establish that the act by its nature will probably and directly result in the application of physical force against another." (*Williams, supra,* at p. 790.) "The pivotal question is whether the defendant intended to commit an act likely to result in such physical force, not whether he or she intended a specific harm. [Citation.]" (*Colantuono, supra,* at p. 218, fn. omitted.)

As used in section 245, a deadly weapon is any object, instrument, or weapon used in such a manner as to be capable of producing and likely to produce, death or great bodily injury. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028-1029.) "[A]ny operation of a vehicle by a person knowing facts that would lead a reasonable person to realize a battery will probably and directly result may be charged as an assault with a

deadly weapon." (*People v. Wright* (2002) 100 Cal.App.4th 703, 706 [substantial evidence supported assault with a deadly weapon conviction where defendant drove his vehicle close to individuals with whom he had contentious relations]; see also *People v. Golde* (2008) 163 Cal.App.4th 101, 110 [substantial evidence supported assault with a deadly weapon conviction where "defendant drove the car toward the victim and repositioned the car toward the victim as she tried to move out of its way"]; *People v. Russell* (2005) 129 Cal.App.4th 776, 778 [assault with a deadly weapon conviction where defendant "intentionally push[ed] another person into the path of an oncoming vehicle"].)

Mares argues there is insufficient evidence his act of backing up the vehicle would "'directly and probably result in the application of force to'" Pirooz. He also asserts a reasonable person backing up a "car at a slow rate of speed toward an able-bodied person who was alert and looking" at the approaching car would reasonably assume the able-bodied person would step out of the way rather than risk being struck. We disagree. The jury could have found Mares knew his conduct would directly and naturally result in a battery and that a reasonable person also would realize this. (*Williams, supra*, 26 Cal.4th at p. 788.) Pirooz's vehicle's red and blue lights were on, his weapon was drawn, and he gave commands in a loud voice. The jury could infer Mares was aware of Pirooz's presence. Rather than comply with the officer's orders to stop, Mares drove his vehicle in reverse directly at him. A reasonable person would understand that driving a vehicle toward an officer seeking to detain the person, at a speed faster than walking, would directly and probably result in a battery on that officer. Indeed, had Pirooz not moved, he would have been struck.

Mares cites *People v. Cotton* (1980) 113 Cal.App.3d 294, 307 and *People v. Jones* (1981) 123 Cal.App.3d 83 for the proposition flight from the police and "mere recklessness" does not establish assault. In *Cotton*, the defendant led officers on a high-speed pursuit. As the defendant approached an intersection, a police car coming in the other direction began a left turn into the intersection. The defendant had been straddling

the number one and number two lanes approaching the intersection. The defendant struck the rear of the officer's car, causing it to spin and burst into flames. Measurements taken immediately after the accident showed the defendant's car left skid marks of approximately 81 feet to the point of impact. An officer driving the lead pursuit car saw the defendant swerve slightly or fishtail in both directions, as if he were undecided about what he might do next. The defendant testified he tried to avoid the officer's car by moving to the other side and by hitting the brakes, but the officer's car had stopped in his path. He braked his car when he was about 80 feet away and tried to slow down as much as he could. His foot was on the brake at impact. The impact caused the brake pedal to bounce back and break his ankle.

Cotton held the evidence was insufficient to sustain the conviction for assault with a deadly weapon. The appellate court stated the trial court, hearing the case without a jury, erroneously relied on a concept of "transferred intent" derived from the defendant's speed and reckless driving. (*Cotton*, *supra*, 113 Cal.App.3d at p. 301.) *Cotton*, noting the trial court did not find the defendant deliberately collided with the officer's vehicle, also relied on the now rejected notion the defendant must have the "intent to commit a battery" with an automobile. (*Id.* at p. 302.) The court noted the Legislature had proscribed reckless driving causing injury in Vehicle Code section 23104, and the statute "conforms precisely to defendant's conduct in this case," "'mere reckless conduct alone cannot constitute an assault.'" (*Id.* at p. 304.) As other courts have noted, the Supreme Court has since restated the elements of assault, which has undermined the continuing viability of *Cotton* and *Jones*. (*People v. Aznavoleh* (2012) 210 Cal.App.4th 1181, 1190 ["[a]s we have explained, [under *Williams*] a defendant need not intend to commit a battery, or even be subjectively aware of the risk that a battery might occur . . . . He need only be aware of what he is doing. The foreseeability of the consequences is judged by the objective 'reasonable person'

standard"].) Substantial evidence supports Mares's conviction for assault with a deadly weapon on a peace officer.

III

DISPOSITION

The judgment is affirmed.

ARONSON, J.

WE CONCUR:

MOORE, ACTING P. J.

IKOLA, J.